

**CITY OF BROKEN ARROW**  
**MINUTES OF**  
**BOARD OF ADJUSTMENT MEETING**  
**July 12, 2004**

The Board of Adjustment Agenda was posted at 2:00 p.m., July 8, 2004, on the City Hall Bulletin Board, 220 South First Street, Broken Arrow. The Broken Arrow Board of Adjustment met in a regular meeting in the City Council Chambers at City Hall on Monday, July 12, 2004, at 6:00 p.m.

Present: Jack Keeling, Chairman  
Archer Honea, Vice Chairman  
Ralph Crotchett, Member  
Tim Edmondson, Member

Absent: Rene' L. Ray, Member

Staff Present: Farhad K. Daroga, City Planner  
Brent Murphy, Ass't City Planner  
James T. McHendry, Staff Planner  
Joyce Snider, Admin Ass't  
April Parnell, Assistant City Attorney

1. The Board considered the minutes of regular Board of Adjustment meeting held June 14, 2004.

**Motion** by Tim Edmondson to approve the minutes of the regular Board of Adjustment meeting held June 14, 2004. The motion was seconded by Archer Honea.

Yes: Edmondson, Honea, Keeling

No: None

Abstain: Crotchett

**Motion approved.**

4. The Board considered BOA 639, request for a variance to waive the sight triangle requirement, Article VIII, Section 11 (Ordinance No. 1560), northeast corner of Main Street and Fort Worth Street, 407 South Main Street, Additive Systems, Inc. (Applicant). Brent Murphy presented the background, saying this item was continued from the June 14, 2004, meeting and the Board requested that a survey drawing be submitted. He said a survey has not been submitted and referred the Board to a drawing given to the Board before previous hearings on this matter. He said Staff feels that the four conditions necessary for the Board to grant a variance have not been met and Staff recommends denial of BOA 639. Jack Keeling asked where the fence would be built if this variance were to be denied. Farhad Daroga said the Building Inspection Department Staff worked with the owner last year on some measurements regarding where the fence can be placed. Discussion followed.

Robert Rogggendorff, Additive Systems, 407 South Main Street, Broken Arrow, said he had nothing to add except that his original measurements had given him insufficient room to build the fence, which was why he applied for a variance. However, the correct calculations provided to him at the last meeting provides him with sufficient room to build the fence. Discussion followed.

4. continued

Mr. Roggendorff said he wished to withdraw his application for a variance. There were no protestants present.

5. The Board considered BOA 643, DN04-113, Green Office Building, request for a variance to reduce the front building line setback from 50 feet to 25 feet on property located one-half mile south of New Orleans, on the west side of Aspen Avenue, Mark Green, (Applicant/Owner). Brent Murphy presented the background, saying BOA 643 is request for a variance to reduce the front building line setback at 4200 S Aspen Place from 50 feet to 25 feet. On April 5, 2004, the City Council approved BAZ 1626 to change the zoning on the property from R-2 to O-3. The City Council agreed to waive the platting requirements required with BAZ 1626 provided right-of-way and utility easements were dedicated along Aspen Avenue in accordance with the subdivision regulations. Currently only the statutory right-of-way exists along Aspen Avenue. He said the applicant is in the process of dedicating 35 feet of additional right-of-way and 17.5 feet of utility easement along Aspen Avenue.

Brent Murphy said There is an existing single-family structure on the property. This structure is currently undergoing renovations to bring it up to commercial code building standards. The O-3 district requires buildings to setback 50 feet from street right-of-ways. According to a drawing supplied by the applicant, the northeast corner of the house is located 61'-3/8" from the existing right-of-way. He said when the applicant provides the right-of-way to be in compliance with the subdivision regulations, the structure will be located 26'-3/8" from the right-of-way line. To provide room for any surveying or measurement adjustment, BOA 643 has been advertised as a request to reduce the building line setback from 50 feet to 25 feet. As part of the Staff report to the Planning Commission and City Council, the applicant was informed that if the rezoning was approved, he would have to submit a request for a variance from the Board of Adjustment for the front building line setback.

Brent Murphy said Staff recommends BOA 643 be approved for a variance to the front yard building line setback requirement at 4200 S Aspen Place subject to the following:

1. Variance to building line setback at 4200 S Aspen Place shall apply only to the existing structure.
2. All future expansions shall meet the setback requirements of the Zoning Ordinance.
3. All conditions of BAZ 1626 are complied with.

Archer Honea asked if this variance request was necessitated by the City's request for donation of right-of-way. Brent Murphy said any time property is rezoned, it must be platted. The City Council waived the platting requirement subject to the applicant donating the right-of-way and utility easements, which he would have had to do if he platted the property.

Mark Green, 4200 South Aspen Place, Broken Arrow described the residential and office uses surrounding his property and said his use would not impact those uses. Discussion followed. There were no protestants present.

**Motion** by Ralph Crotchett to approve BOA 643 as recommended by Staff. The motion was seconded by Tim Edmondson.

Yes: Edmondson, Crotchett, Honea, Keeling

No: None

**Motion approved.**

6. The Board considered BOA 644, request for a variance to allow an 8' x 10' shed to remain on

property located at 2626 West Atlanta Street, Wolf Creek Estates IV, Sherry Morrison (Applicant/Owner). Brent Murphy noted for the record that Ralph Crotchett has left the meeting to avoid a potential conflict of interest and presented the background, saying this is a variance to reduce the building line setback along the west side of 2626 West Atlanta Street from 25' to 6'. He said this property is located on the northeast corner of Atlanta Street and Fir Place.

Brent Murphy said the Building Inspection Department Staff said they had not received a building permit request prior to construction of this building, though they did receive a request after the building was constructed. He said the request was not approved because it did not meet the setback criteria and they have received a complaint about this building. He said the only location the building could have been built where it would meet the Zoning Code requirements was on the east side. He said the applicant said she did not choose to locate the shed on the east side of her lot because of utility lines, some large trees and the absence of a fence. He said, in Staff's opinion, the shed could have been located on the east side and met all the requirements of the Zoning Ordinance. He said, in Staff's opinion, this variance request did not meet the four conditions required for the Board to grant a variance, so Staff has recommended denial.

Jack Keeling said it looks as though the fence is also outside the building setback line and Staff said that is correct. Tim Edmondson asked when the structure was red tagged. Brent Murphy said it was tagged while it was under construction. No one would have seen the slab before the walls were constructed.

Sherry Morrison, 2626 West Atlanta, Broken Arrow, talked about the history of her fence and the construction of the shed and said the Homeowners' Association was in favor of the shed. Discussion followed.

Jerry Forman, 2622 West Atlanta Street, Mrs. Morrison's neighbor on the east side of her home, talked about the utility lines on that side, saying they leave no room for a shed. She said Mrs. Morrison mows her (Mrs. Forman's) lawn as well as her own and that she had not known a permit was required.. Archer Honea pointed out that any licensed contractor would know that a permit would be required to build a shed. Discussion followed.

Nancy Casillas, 2627 West Atlanta Street, said she lives across the street from Mrs. Morrison. She said if Mrs. Morrison moves her shed, all she (Mrs. Casillas) will see when she looks across the street is a fence. She spoke in favor of allowing the shed to remain where it is.

Jeanne Becker, 2228 South Fir Avenue, across the street from Mrs. Morrison, said they have never had a problem, and the shed should be allowed to remain where it is and said Mrs. Morrison is a good neighbor.

There were no protestants present.

The Board discussed the number of votes necessary to approve or deny a request before them and Brent Murphy read Article 11, Section 5.2 which states that ...the Board of Adjustment shall have the concurring vote of at least three of its members in order that it may reverse or affirm, wholly or partly, ....

6. continued

Jack Keeling said that in order for this to pass it must have the vote of the majority of all five members. Discussion followed.

**Motion** by Archer Honea to continue BOA 644 to the next Board of Adjustment meeting. The motion was seconded by Tim Edmondson.

Yes: Edmondson, Honea, Keeling

No: None

**Motion approved**

Brent Murphy said the next Board of Adjustment meeting will be held on August 9, 2004 at 6:00 p.m.

Ralph Crotchett returned to the meeting room.

7. The Board considered BOA 645, request for a variance to reduce the building line setback 8' 4" on the south side, 6' on the west side and 7' on the north side, on property located on the northwest corner of Houston/81<sup>st</sup> Street and Date Avenue, Ron W. Lewis (Applicant/Owner). Brent Murphy presented the background, outlined the three variances are being requested and the following facts:

**Farhad: Since there are a number of facts, it was quicker to insert them from the staff report.**

The lot is within 460 feet of the intersection of Elm Place and Houston Street. According to the subdivision regulations, 70 feet of right-of-way is required within 500 feet of an arterial street intersection. According to a drawing supplied by the applicant, only 50 feet of right-of-way has been provided along Houston Street. The property is currently zoned R-3. There are no structures on the property. A chain link fence with three stands of barbed wire strung across the top of the fence has been erected upon the property. This fence does not meet Article 8 Section 11.2.a of the Zoning Ordinance. According to the drawing submitted by the applicant, the fence is located one foot inside the property line on all four sides.

Brent Murphy said that in the R-3 district, the building setback requirement along an arterial street is 35 feet. Applicant is requesting a variance to reduce the building line setback from 35 feet to 26'-8". An alleyway that is paved with gravel abuts the property on the north. This is an active alley. In the R-3 district, buildings are required to setback 25 feet from an alley. Applicant is requesting a variance to reduce the building line setback along north property line from 25 feet to 18 feet. The property was platted with lots that are 25 feet in width. Applicant has four lots, which makes his total property depth 100 feet. In the R-3 district a rear yard of 20% of the lot depth is required. A rear yard of 20 feet is required on this property. Applicant is requesting a variance to reduce the rear yard setback from 20 feet to 14 feet.

Brent Murphy said no professional survey was provided to build the proposed single family dwelling unit, but instead only a hand drawn site plan showing the dimensions of a proposed structure (72 feet x 36 feet) was provided. No point of entry or driveway was shown on the site plan. The property was platted as part of the Homestead Addition. The lots in this addition are 25 feet in width. At the time the property was platted, only 24.5 feet of right-of-way was provided along Houston Street. On the drawing submitted by the applicant, right-of-way is shown to be 50 feet. 75 foot setback is required.

7. continued

Bent Murphy said the applicant has not supplied any information, nor has Staff been able to identify the hardship associated with this property. Applicant is showing a proposed building to setback 46'-6" (21'-6" greater than required) from the front building line along Date Avenue, while at the same time requesting a variance to reduce the rear yard from 20 feet to 14 feet. Such a request is self-created. Since the variances requested do not meet the four conditions for the Board of Adjustment to grant a variance, Staff recommends that BOA 645 be denied.

Jack Keeling requested that the requested variances be repeated and Brent Murphy did so. Jack Keeling asked if the house next door was the house built by Habitat for Humanity and Brent Murphy said it was and outlined the variance granted on that property. Discussion followed.

Ralph Crotchett asked if this is a residential structure and Brent Murphy said the applicant said the structure would have a garage, a living room, bathroom, in the structure.

Archer Honea asked if Staff believes a residential structure could be built on this property that would meet the Zoning Code requirements and Brent Murphy said it could, that this property is much larger than the minimum lot size and frontage requirements of the R-3 district.

Ron Lewis, 1508 West Jackson Street, Broken Arrow, said he bought the property in 2003. He said this property is 72' x 36' and he wanted to build a 30-foot apartment with a living room, bedroom, bath, and dining area. He said he wanted the other space for a personal garage because he has a 25-foot boat, a 350 diesel truck and he has no place at his house because he has saws and woodworking equipment in his garage. He said this location is within a half mile from his house and showed a photo of a metal building. He outlined the access needed and the design used to gain access, as well as the amount of land he has deeded to the City.

Jack Keeling asked Mr. Lewis if he was going to live on this property and Mr. Lewis said he was not. It will be a place to house his truck, his trailer, his boat, and a place to do his woodwork. Jack Keeling asked if the chain link fence would remain and Mr. Lewis said it would. Archer Honea asked the purpose of the barbed wire at the top of the fence. Mr. Lewis said to keep the kids from climbing the fence. Archer Honea asked April Parnell if putting a building like that proposed in R-3 district without anyone living in it a permitted use. April Parnell said it has to be a residence, not a storage building. Ron Lewis said it will not be a storage building, it will be a building for his personal use. April Parnell said it sounds like it will be a workshop and he has stated he is not going to live there, and, looking at the picture, she doubted it could be marketed and sold as a single family residence, it looks like a storage building. Mr. Lewis said he didn't think it would meet the criteria as a house, but it meets the same criteria as a building four blocks away that is in a R-3 district, set on three lots. He said that building is across from a nursing home. He said he will spend time in the building he plans to build and that is why he purchased that land. He also said he checked with the Planning Commission who said as long as it meets R-3 standards, it is not a problem. Discussion followed regarding the layout of the living and garage space. April Parnell said it will have to meeting building and fire code standards and talked about comparative cases. Mr. Lewis said there will be inspections every step of the way during construction.

7. continued

Farhad Daroga clarified that the request is for three variances, regardless of the use, so if he is not under the R-3 use compliance, he will probably not get a permit from the Inspections Department. He said what the Board needs to do is determine whether there is sufficient hardship for these three variances to be considered. Archer Honea asked if it was appropriate for the Board to rule on a

variance without knowing the proposed application is going to be in compliance. Farhad Daroga said the choice the Board needs to make is whether there is a hardship, i.e. is there room enough to build an R-3 structure and Staff has said there is room. He said the structure is designed for storage and that is why the applicant is having problems. He has 40 to 50 percent more land than others do to build on this land. However, the use is not under consideration. Mr. Lewis said he considers this a garage, not storage. He said he has received approval for a square building, but rather than a square building, he needs a rectangle because of the power lines and the alley and the difficulty in entering his garage because of the length of his vehicles. He talked further about possible alternatives for placement of a building on the property.

Jack Keeling asked if the building is prefabricated and Mr. Lewis said it was not. Discussion followed on the materials that will be used. He said he does not intend to run a business at this location.

Steve Howard, 318 North Date, Broken Arrow, said he owns the property to the north of Mr. Lewis and asked if it is zoned R-3. He was told it was. He asked if it would change the status if a metal building was built to be used for storage with a unit attached. Jack Keeling said, as the attorney pointed out, the City must approve the building or Mr. Lewis won't obtain a building permit. Mr. Howard expressed concern that this would become a commercial enterprise at some time in the future. He said there is a church close by. He said he would like to keep his area residential. Discussion followed.

Carmen Vasques, 512 West Houston, the owner of the Habitat home, said she recently moved into her house and she doesn't want to see a metal building outside her kitchen and bedroom windows. She said she did not agree with Mr. Lewis's statement that he has 85 feet on Date, but he is pushing his building toward the west side. She said the barbed wire on the fence is a safety issue, that her daughter was giving her smaller sister a piggy back ride and the little one's hair got caught in the barbed wire. She said it is like being in a prison looking at the fence. She said they use the alley. She emphasized that she does not want to see a metal building there. It will not look good.

Ron Lewis said the fence was there before Mrs. Vasques' house.

Archer Honea pointed out that the purpose of variances is to provide relief from hardships caused by the Zoning Code requirements to make property usable. Brent Murphy outlined the four conditions that must be present in order for the Board to grant a variance. Discussion followed.

**Motion** by Tim Edmondson to deny BOA 645. The motion was seconded by Archer Honea.

Yes: Edmondson, Crotchett, Honea, Keeling

No: None

**Motion approved**

The Board recessed at 7:40 p.m. and reconvened at 7:50 p.m.

8. The Board considered BOA 647, request for a variance to reduce the building line setback from five feet to one foot on the west side on property located at 1105 West Eldorado Street, Meadows at Indian Springs, Marvin Black (Applicant/Owner). Brent Murphy presented the background, saying BOA 647 is a request for a variance to reduce the side yard building line setback along the west side of 1105 West El Dorado Street from 5 feet to 1 foot. He said the applicant has constructed a carport on the west side of his house. He said the carport is attached to the house and according to

the applicant is located one foot from the west property line. The property is zoned R-2. Buildings in the R-2 district are required to setback 5 feet on one side and 10 feet on the other. Applicant has requested that the building setback line on the west side of his house be reduced from five feet to one foot. The carport is located behind the front building line and is partially screened by an opaque fence. No information has been supplied as to when the carport was constructed. The addition appears in 2003 aerials, but not in 2001 aerials. He said no survey information has been provided by the applicant.

Brent Murphy said the request must meet the four conditions in order for the Board to grant a variance. He said no information has been supplied by the applicant as to how his request meets the four conditions, so Staff recommends this request be denied. He said a citation has been issued, but is being held until action is taken at this meeting. The Board asked if other alternatives to this carport were available to the applicant and for specific information regarding zoning requirements in this area. Brent Murphy provided the information.

Marvin Black, 1105 West Eldorado, said no one has complained until the next door neighbor left a car in his yard for three years and which he, Mr. Black, had towed, after which the neighbor retaliated by complaining about the carport. He said his survey did not show the five-foot from the property. On the left side of his property he has about 15-feet. He said he had two classic cars that he parks under the carport. He described the materials with which the carport was constructed and said it was 33-feet long it was expensive to build and it would be cost prohibitive to cut off five-feet of it. He said there is no other place in the back yard that a carport could be constructed. He submitted photos of the house showing the location of the carport.

Alternatives were discussed for removing the offending four feet of the carport, including moving the support posts, which sit 2 to 2.50 feet away from the property line, another four feet.. Farhad Daroga said it might be better to continue this application to the next meeting. The applicant agreed. Brent Murphy introduced a letter of protest against this request received in the Planning Department from Mark Officer.

Marcella Carlson, 1101 West Eldorado, asked for specifics regarding what was being requested and the variance request was explained to her and she was told it would not affect her property.

**Motion** by Archer Honea to continue BOA 647 to the next regularly scheduled meeting of the Board. The motion was seconded by Ralph Crotchett.

Yes: Edmondson, Crotchett, Honea, Keeling

No: None

**Motion approved**

Brent Murphy said the next regularly scheduled meeting of the Board of Adjustment will be held on August 9, 2004, at 6:00 p.m.

9. The Board considered BOA 648, request for a variance to reduce the building line setback from 25 feet to 19 feet on the front on property located at 6505 South Sycamore Avenue, Southtowne Estates, Hall, Rosenbaum & Associates (Applicant). Brent Murphy presented the background, saying BOA 648 is a request for a variance to reduce the building line setback at 6505 S. Sycamore from 25 feet to 19 feet. There is a single-family structure on the property. According to a survey dated May 25, 2004, the garage extends 5.6 feet over the 25-foot building line setback. According

to the applicant, when the building was being constructed building setback distances were measured from the curb instead of the property line. On this lot, the street continues straight north/south, while the property line slants in a northeast direction. Due to the building location error, applicant is seeking to obtain a variance from the Board of Adjustment to permit the future sale of said structure.

Brent Murphy said Staff recommends BOA 648 be approved for a variance to the building line setback requirement on Lot 2, Block 1, Southtowne Estates (6505 S. Sycamore Avenue) subject to the following two conditions.

1. Variance to building line setback on 6505 S. Sycamore Avenue shall apply only to the existing structure.
2. All future expansions shall meet the setback requirements of the Zoning Ordinance

The Commission discussed the circumstances under which the error occurred and whose responsibility it was.

Alan Hall, 1913 West Tacoma, said the layout person used the curbs to lay out this home, apparently a survey was not performed, but he did not know why they didn't check on the front. He said from the worst case, the 19.4 feet to the curb is approximately 38 feet and in a standard residential subdivision you have a 25-foot setback in an R-2 district, plus 12-feet of right-of-way, which gives you 37-feet, so theoretically this is in conformance with the intent, but it is way over the building line. Discussion followed.

**Motion** by Archer Honea to approve BOA 648 as recommended by Staff, including that the variance shall apply only to the existing structure and all future expansions shall meet the setback requirements of the Zoning Ordinance. The motion was seconded by Tim Edmondson.

Yes: Edmondson, Crotchett, Honea, Keeling

No: None

**Motion approved**

Farhad Daroga introduced James McHendry, who is the newest Staff member in the Planning Department. He said James has a Masters degree.

Tim Edmondson said with the City Council hiring a consultant to plan the downtown, he suggested the Council approve a moratorium on issuing building permits in the affected area, from Kenosha to Houston and Elm Place to Main Street. Farhad Daroga gave the Board a brief status report to the Board regarding the development of the downtown master plan, said four finalists had been chosen and if members of the Board would like to review those bids, to let him know.

10. **Motion** at 8:39 p.m. by Archer Honea to adjourn. The motion was seconded by Ralph Crotchett.

Yes: Ray, Edmondson, Honea, Keeling

No: None

**Motion approved.**